

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 82929 through A MC 82944, A MC 82948 through A MC 82958.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Floyd R. Bekins, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Floyd R. Bekins, Jr., appeals from the decision of the Arizona State Office, Bureau of Land Management (BLM), dated January 6, 1983, which declared the unpatented Redhill Nos. 1 through 16, Padres, Padres Nos. 2 through 6, Padres No. 15, Padres No. 18, and Hester Nos. 3 through 5 lode mining claims, A MC 82929 through A MC 82944, A MC 82948 through A MC 82958, abandoned and void for failure to file on or before December 30, 1981, evidence of performance of annual assessment work or a notice of intention to hold the claims, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Appellant states that the 1981 assessment work was performed and the necessary proof of labor was recorded in Pima County, Arizona, August 26, 1981. Two copies of the proofs of labor for several groups of unpatented mining claims were taken personally by appellant to the BLM office in Phoenix and presented to the receiving clerk with a request that the duplicate of each proof of labor be stamped and returned to him. He did not check each instrument returned to ascertain that it had been stamped by BLM. While preparing the proofs of labor for 1982, he discovered that both copies of the 1981 proof of labor for the claims in Pima County were in his file and neither showed a BLM stamp.

BLM states it has no record of receipt of the subject proof of labor, and concedes it is possible the subject proof of labor was overlooked, but appellant has not presented conclusive evidence that the proof of labor was actually submitted for filing.

[1] Under section 314(a) of FLPMA, the owner of a mining claim located before October 21, 1976, must file evidence of performance of assessment work or a notice of intention to hold the claim with the proper office of BLM by October 22, 1979, and on or before December 30 of every calendar year thereafter. This requirement is mandatory, not discretionary, and failure to comply is conclusively deemed to constitute abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980).

[2] With respect to the conclusive presumption of abandonment and the argument that the intent not to abandon was manifest, we stated in Lynn Keith, supra:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive

or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

* * * Appellant also argues that the intention not to abandon these claims was apparent * * *. At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

53 IBLA at 196-97; 88 I.D. at 371-72.

Although there is a presumption by public officials in the performance of their official duties, the presumption is rebuttable. Bernard J. Braker, 54 IBLA 332 (1981); L. E. Garrison, 52 IBLA 131 (1981). Appellant has not conclusively established that he presented the 1981 proof of labor to BLM.

Although appellant could have presented the proofs of labor as he has indicated, it seems most unlikely that the BLM receiving clerk would have overlooked stamping both copies, as the receiving stamp used by BLM is electrically operated, showing the time by minutes, and requires that each sheet be inserted manually and individually. If the proof of labor for the subject mining claims was, in fact, in the tendered folder, we believe that the clerk would have stamped them as requested. Further, appellant has not explained why he did not check the copies returned to him to be assured that he had copies of all six proofs of labor.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

